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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/044,594 | 01/10/2002 | Philip G. Sweeny | 5408/0A237-US2 | 4720 |

7278 7590 12/04/2002

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EXAMINER

HRUSKOCI, PETER A

ART UNIT PAPER NUMBER

1724

DATE MAILED: 12/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

| Offic Action Summary | Application No. | Applicant(s) | |
|-----------------------------|------------------------|---------------------|--|
| | 10/044,594 | SWEENEY, PHILIP G. | |
| Examiner | Art Unit | | |
| Peter A. Hruskoci | 1724 | | |

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 1-10, 5-3, 5-10, and 10-1-02 .

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-4,8,11,12 and 14-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 2-4,8,11,12 and 14-16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
4) Interview Summary (PTO-413) Paper No(s). ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

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1. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: The declaration fails to identify the specification to which it is directed to as required by 37 CFR 1.63(a)(2); the declaration does not meet the requirement of 35 USC 115 and 37 CFR 1.63(a)(3). Each inventor's residence and mailing address must be provided, if they have not been supplied in the application data sheet in accordance with 37 CFR 1.76; the declaration in paragraph 7 states that claims 14 and 16 patented as a result of a reexamination proceeding are broader than the original claims. This statement would seem to violate or run counter to 35 USC 305 and 37 CFR 1.552(b), which categorically prohibits enlarging the scope of claims of the patent(See MPEP 2254,2258).

3. Claims 2-4, 8, 11, 12, and 14-16 are rejected as being based upon a defective reissue under 35 U.S.C. 251. See 37 CFR 1.175.

The nature of the defects in the declaration are set forth in the discussion above in this Office action.

4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. In claim 14 line 10 "halogentated" is erroneous and should be changed to - halogenated -.

5. Claims 2-4, 8, 11, 12, and 14-16 are rejected under 35 U.S.C. 251 for lack of error. It is submitted that the typographical error in claim 14 does not support the filing of a reissue application in accordance with MPEP 1402.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (703) 308-3839. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Simmons, can be reached on (703) 308-1972. The fax phone number for this Group is (703) 872-9310 (non-after finals) and 703-872-9311 after finals.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Peter A. Hruskoci
Peter A. Hruskoci
Primary Examiner
Art Unit 1724

P. Hruskoci
November 19, 2002